

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Verizon)	IC No. 04-S85956
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: January 29, 2007

Released: January 29, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Verizon¹ asking us to reverse a finding that Verizon changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.² On reconsideration, we affirm that Verizon's actions violated the Commission's carrier change rules.³

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ The rules were designed to take the profit out of slamming.⁵ The Commission applied the rules to all wireline carriers,⁶ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁷

3. The rules require that a submitting carrier receive individual subscriber consent before a

¹ See Petition for Reconsideration of Verizon (filed October 29, 2004) (*Petition*) seeking reconsideration of *Verizon*, 19 FCC Rcd 19013 (2004) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CCB).

² See *Division Order*, 19 FCC Rcd 19013 (2004).

³ See 47 C.F.R. §§ 64.1100 – 64.1190.

⁴ See *id.*; see also 47 U.S.C. § 258(a).

⁵ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁶ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

⁷ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

carrier change may occur.⁸ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁹

4. The Commission also adopted liability rules for carriers that engage in slamming.¹⁰ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹¹ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹²

5. The Commission received a complaint on January 5, 2005 alleging that Complainant's telecommunications service provider had been changed from IT&E Overseas to Qwest Communications, Inc. (Qwest) without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ the Division notified Qwest of the complaint.¹⁵ In its response, Qwest referred the Division to Verizon, Complainant's local exchange carrier.¹⁶ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁷ the Division notified Verizon of the complaint.¹⁸ In its response, Verizon stated that the order for Complainant's service was incorrectly processed due to a switch translation error by Verizon.¹⁹ The Division found that Verizon failed to produce clear and convincing evidence that Complainant authorized a carrier change, and that Verizon's actions resulted in an unauthorized change in

⁸ See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁹ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹¹ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹² See 47 C.F.R. §§ 64.1140, 64.1170.

¹³ Informal Complaint No. IC 04-S85956, filed January 5, 2005.

¹⁴ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁵ See Notice of Informal Complaint No. IC 04-S85956 to Qwest from the Acting Deputy Chief, CGB, dated January 23, 2004.

¹⁶ Qwest Communications, Inc.'s Response to Informal Complaint No. IC 04-S85956, received February 19, 2004.

¹⁷ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁸ Notice of Informal Complaint No. IC 04-S85956 to Verizon from the Deputy Chief, CGB, dated May 24, 2004.

¹⁹ Verizon Response to Informal Complaint No. 04-S85956, received June 10, 2004.

Complainant's telecommunications service provider.²⁰ Verizon seeks reconsideration of the *Division Order*.

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny Verizon's *Petition*. In the *Petition*, Verizon states that it did not change Complainant's service to a new carrier, as originally stated, but that the disputed charges arose from Complainant's use of a dial-around number.²¹ Verizon argues that, based on these additional facts, the *Division Order* should be overturned.

7. The Commission's rules require the alleged unauthorized carrier to provide clear and convincing evidence of a valid authorized carrier change not more than 30 days after notification of the complaint.²² In order to introduce new facts on reconsideration, a petitioner must show either that (1) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through ordinary diligence, have been learned prior to such opportunity. New facts may also be introduced on reconsideration if the Commission determines that consideration of such facts is in the public interest.²³

8. Verizon claims that it meets the first criterion because it learned only after the *Division Order* was issued that the disputed charges resulted from dial around calls and not from a carrier change. Verizon also argues that it meets the second criterion because it could not have discovered the nature of the disputed charges without "substantial research."²⁴ Lastly, Verizon argues it is in the public interest to allow for all relevant evidence to enter into the record regardless of when that evidence is provided to the Commission.²⁵

9. As to Verizon's claim that it meets the first criterion, we disagree that an event has occurred or circumstances have changed since Verizon first responded other than Verizon's discovery of its mistake as to the nature of the calls. Verizon could have determined that the charges in question derived from dial-around calls at the time of Verizon's original response. Verizon fails to explain why the new information could not have been discovered through ordinary diligence before its initial response. Finally, to allow new facts to be submitted on reconsideration without good cause would hamper the public's interest in the quick resolution of complaints. While we realize that there may be some circumstances under which it is appropriate for a carrier to be given more than 30 days to respond fully to a slamming complaint (and we would consider all such requests), we do not believe it is appropriate to allow the submission of new facts when a carrier has been given ample time to respond in the first instance, and without any showing of good cause, after an order has been issued against the carrier.²⁶

²⁰ See *Division Order*, 19 FCC Rcd 19013 (2004).

²¹ See *Petition* at 2.

²² See 47 C.F.R. § 64.1150(d).

²³ See 47 C.F.R. § 1.106(c).

²⁴ *Petition* at 3.

²⁵ See *id.*

²⁶ See AT&T Corporation, DA 06-2066, released October 19, 2006 at para. 7; Comcast Phone LLC, DA 06-2067, released October 19, 2006 at para. 7; Globalcom Inc., DA 06-2069, released October 19, 2006 at para. 7; MCI, Inc. DA 06-2070, released October 19, 2006 at para. 7.

Accordingly, we deny Verizon's *Petition*.

III. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the petition for reconsideration filed by Verizon Long Distance on October 29, 2004, IS DENIED.

11. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau